

# Government of the District of Columbia

## ZONING COMMISSION



ZONING COMMISSION ORDER NO. 416

CASE NO. 83-15

DECEMBER 19, 1983

Pursuant to the publication of a notice of proposed rulemaking and direct notice to the chairpersons of all Advisory Neighborhood Commissions (ANC), the District of Columbia Zoning Commission considered proposed amendments to its Rules of Practice and Procedure. The proposed amendments identified the rights and responsibilities of ANC's when participating in proceedings before the Zoning Commission.

The Zoning Commission determined over time that various ANC's were not providing adequate information to the Commission in a manner that would assist the Zoning Commission in making decision on applications it was considering. The Commission often was not afforded an opportunity to receive, consider, and understand an ANC report in advance of a public hearing on a case.

On August 15, 1983 at its regular monthly meeting, the Chairman of the Zoning Commission requested the Zoning Secretariat to prepare proposed amendments to the ANC provisions of the Z.C. Rules of Practice and Procedure. The proposed amendments would make the Z.C. Rules substantially consistent with the ANC provisions of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment (BZA). The Zoning Secretariat advised the Commission that the BZA had no complaints about and was generally satisfied with the implementation and impact of the ANC provisions of the BZA Rules. Issues and concerns relative to this matter were fully solicited through testimony considered by the Commission during the public hearings on Zoning Commission Case No. 82-1 (BZA Rules Amendment) on April 12 and 14, 1982.

On November 4, 1983, a notice of proposed rulemaking was published in the D.C. Register. The following comments were received:

1. Advisory Neighborhood Commission - 2A, by resolution dated November 3, 1983, supported the concept of requiring standards for ANC reports, but opposed the filing requirement for ANC's of seven

days in advance of a hearing. ANC - 2A recommended that the proposal be set for public hearing.

2. Advisory Neighborhood Commission - 2B, by letter dated November 18, 1983, did not object to the proposed requirements of the signature of the ANC Chairperson or Vice-Chairperson, recording the ANC vote, and identifying the ANC representative. ANC - 2B was concerned with the prehearing ANC filing requirement of seven days.
3. Advisory Neighborhood Commission - 3C, by resolution dated November 28, 1983, supported the objectives of the proposed rules but opposed certain procedural requirements that did not address the merits of a case. The ANC proposed substitute language. ANC - 3C also believed that ANC representatives should be limited to and not expected to deviate from the written position of the ANC. Likewise, the ANC believed that neither the applicant nor other parties should be permitted to change their prehearing submissions because it would defeat the intent of the proposal; e.g., to afford the Commission an opportunity to receive, consider and understand the ANC's position in advance of a hearing. ANC - 3C supported the scheduling of a public hearing on the proposed amendments to the Z.C. Rules.
4. Advisory Neighborhood Commission - 2D, by letter dated December 9, 1983, and Advisory Neighborhood Commission - 1B, by letter dated December 16, 1983, opposed the adoption of the proposed rules and requested that a public hearing be scheduled on the matter.

As to the concern of not setting a public hearing on the proposal, the Commission believes that these issues were fully raised and discussed in the consideration of the BZA Rules last year, and that no substantially different issues have been identified in the letters received which would warrant holding a hearing.

The Commission is mindful of the Administrative Procedure Act and D.C. Laws 1-121 and 1-58 which require the Commission, when making its decisions, to give "great weight" to ANC's, provided that certain requirements are met. No other party has the same standing by law and no other party is entitled by law to be accorded "great weight". The Zoning Commission notes that other persons who desire to be admitted as a party in a contested case are required to submit requests for such status in advance of a hearing with appropriate documentation. For these reasons, the

Commission believes that it should have a reasonable period of time to consider an ANC's position before a hearing.

The Zoning Commission believes that the subject procedures have worked well in the year and one-half that the BZA Rules have been in effect. Furthermore, the ANC provisions of the BZA Rules have given the BZA helpful and adequate means to insure that ANC's, that wish to be accorded the "great weight" to which they're entitled, have participated properly in the zoning process. The Commission is further mindful of several recent instances where the Commission and public would have been better served if the Commission had received an ANC report in advance of a hearing that had set forth the specific information now proposed to be required.

The Commission believes that the proposed amendments to the Rules of Practice and Procedure before the Zoning Commission are in the best interest of the District of Columbia and the zoning process. In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of the following amendments to the Z.C. Rules of Practice and Procedure:

The specific amendments are to delete existing Section 3.1d and add new sections 3.1d and 3.1e as follows:


- d. If an Advisory Neighborhood Commission (ANC) wishes to participate in a case, it shall file a written report with the Commission at least seven days in advance of the hearing. The written report shall contain the following:
  1. An identification of the application;
  2. When the public meeting of the ANC to consider the application was held;
  3. Whether proper notice of that meeting was given by the ANC;
  4. The number of members of the ANC that constitute a quorum and the number of members present at the meeting;
  5. The issues and concerns of the ANC about the application, as related to the standards against which the application must be judged;
  6. The recommendation, if any, of the ANC as to the disposition of the application;
  7. The vote on the motion to adopt the report to the Commission;


8. The name of the person who is authorized by the ANC to present the report;
  9. The signature of the chairman or vice-chairman of the ANC.
- e. The Commission shall give "great weight" to the written report of the ANC, as required by Section 1-261, D.C. Code, 1981 Ed. In the event the ANC submits its report on the basis of understandings, agreements or meetings with the applicant which later are modified by the applicant, the designated representative of the ANC may comment orally concerning the specific modifications. No other new matters may be presented orally by the designated representative of the ANC. The Commission may leave the record open to permit the ANC to submit a revised report.

Vote of the Commission taken at the public meeting on September 19, 1983: 4-0 (John G. Parsons, Walter B. Lewis, and Maybelle T. Bennett, to approve, and Lindsley Williams, to approve by absentee vote - George M. White, not present not voting).

This order was adopted by the Zoning Commission at its meeting on December 19, 1983 by a vote of 5-0 (Walter B. Lewis, Maybelle T. Bennett, George M. White, John G. Parsons, and Lindsley Williams, to adopt as amended).

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, these amendments to the Z.C. Rules of Practice and Procedure are effective upon publication in the D.C. Register, specifically on JAN - 6 1984.

  
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LINDSLEY WILLIAMS  
Chairperson  
Zoning Commission

  
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STEVEN E. SHER  
Executive Director  
Zoning Secretariat